CF0000061029

CA 2246/96 (2)

XII-189 / (Jail)
C. I. P. R. 11/94/2,000

Division Bench (Criminal)

High Court of Madhya Pradesh
JABALPUR
Reg. No. 716
Recept Clerk
High Court, Jabalpur

APPEAL OF PRISONER

No. 4609 Name दुकालूराम वर्मा

Father's name रामप्रसाद वर्मा

Residence मैनपुरा जिला रायपुर म0प्र0 Age 55 वर्ष

Sentenced to आजीवन एवं 6 मा सश्र एवं जुर्माना 200 या 1 माह सश्र On 11/10/96

Under section 302/34 भा0दं0वि0 by माननीय तृतीय अपर सत्र न्यायाधीश, रायपुर, म0प्र0

It is explained to the prisoner that if he states or wishes to be represented by legal practitioner the Appellate Court will not proceed with the base for seven days unless the legal practitioner appears. If the legal practitioner does not appear within seven days he may not heard at all. If the prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

1 Date of Application for copy of Judgement .....

2 Date on which copy received .....

3 Date on which Appeal sent ..... 28/11/96 .....

4 Whether the prisoner wishes to be represented or not – Yes / No

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No. 4609 Name दुकालू वर्मा आत्मज रामप्रसाद वर्मा

Confined in जेल ट्रीब Jail रायपुर, म0प्र0

No. 886 /विविध/96 Dated 28/11/ 1996

Forwarded to the CHIEF JUDICIAL MAGISTRATE अतिरिक्त पंजीयक महोदय, माननीय उच्च न्यायालय म0प्र0 जबलपुर

togather which a copy of judgement or order passed in the case for favour of transmission to the proper Appellate Court.

संलग्न:- सत्र प्रकरण क्रमांक-352/95, की प्रमाणित निर्णय प्रतिलिपि।

Superintendent
Jail (M.P.)

Date of receipt in office

Date of receipt record to accompany the

Memo of Appeal to the Appellate court

No Dated 199

Forwarded to the

Date of receipt in Appellate Court

(P. T. O.)

XI-HC-22

(21)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक Cr. A. No. 2246/96 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH: HON'BLE SHRI L.C.BHADOO & HON'BLE SHRI DHIRENDRA MISHRA, JJ

CRIMINAL APPEAL NO. 2246 of 1996

Appellant : Dukaluram Verma

Vs.

Respondent : State of Madhya Pradesh

Smt. Kiran Jain, learned counsel for the appellant.

Shri Akhil Mishra with Shri M.P.S. Bhatia, learned Panel Lawyers for the respondent/State.

ORAL JUDGMENT
(14.02.2006)

L.C.Bhadoo, J

The appellant has preferred this appeal under Section 374(2) of the Criminal Procedure Code questioning the legality and correctness of the judgment of conviction and order of sentence dated 11.10.1996 passed by learned Third Additional Sessions Judge, Raipur in S.T. No. 352/95 convicting the accused/appellant for commission of the offence under Sections 324 and 302 of the Indian Penal Code and sentencing him to undergo Rigorous Imprisonment for six months and life imprisonment with fine of Rs. 200/-, in default of payment of fine to further undergo RI for one month respectively.

2. Case of the prosecution, in brief, is that P.W.-6 Mohit Kumar Verma, Sarpanch of village Bhaismuda gave merg intimation P-14 to the

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Station House Officer, Police Station Dharsewa to the effect that on 24.07.1995 at about 7-7.30 a.m. Dukalu Verma first attacked Bhagwan Singh with axe on the pretext that they were not allowing him to cultivate the Government land and after sometime he again came with lathi and knife and attacked Shriram Verma with the knife on his neck and thereby murdered him. Receiving this report, the Station House Officer, Dharsewa registered Crime No. 127/95 under FIR P-4 for the commission of the offences under Sections 302,307 and 323 of the IPC, left for the scene of occurrence after giving notice P-5 to the Panchas and prepared the Panchnama P-6 of dead body of Shriram Verma. While in police custody accused/appellant Dukalu gave memorandum P-7 regarding the place where he had kept the weapon of offence *lathi* and knife and in pursuance thereof he got recovered knife and *lathi* under P-8, axe was recovered under P-9, one cotton cloth of green colour, blood stained soil and plain soil were taken into possession from the place of occurrence under P-10. Patwari prepared the site plans of place of occurrence P-11 and P-12. Injuries present on the person of Mohit Kumar Verma were examined by Dr. S.H.Jaiswal and the injury report is P-13. The injuries sustained by Bhagwan Singh were also examined by the same doctor and the report is P-14. Investigating Officer prepared the site plan P-15. Post mortem on the body of Shriram Verma was conducted by Dr. D.C. Jain who prepared the post mortem report P-2. The recovered articles were sent to the Forensic Science Laboratory under P-16 and report P-17 was received. After completion of the investigation charge sheet was filed in the Court of JMFC, Raipur who in turn committed the case to Session Judge, Raipur from where learned Third Additional Session Judge, Raipur received the case on transfer for trial.

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3. The prosecution in order to establish the charges against the accused/appellant examined ten witnesses. Statement of the accused/appellant was also recorded under Section 313 of the Cr.P.C. in which he denied the prosecution evidence appearing against him and pleaded ignorance and stated that he is innocent. The accused/appellant also examined one witness namely Pawan Kumar Yadav in his defence.

4. Learned Additional Session Judge after hearing the arguments of the Additional Public Prosecutor and counsel for the accused/appellant, convicted and sentenced the accused as mentioned in paragraph one of this judgment.

5. We have heard Smt. Kiran Jain, learned counsel for the accused/appellant and Shri Akhil Mishra with Shri M.P.S.Bhatia, Panel Lawyers for the State and perused the impugned judgment and evidence available on record.

6. Homicidal death of Shriram Verma is not in dispute.

7. As far as the involvement of the accused/appellant in committing the murder of Shriram Verma is concerned, P.W.-1 Bhagwan Singh has stated that on the fateful day at about 7.00 a.m. when he was sitting in front of his shop accused came with axe and started abusing. When Bhagwan Singh enquired from the accused/appellant as to whom he was abusing, he said that he was abusing him and attacked him on his neck and in the meantime Lakhan Verma came there and he intervened. Blood

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विरुद्ध

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started oozing out of the injury. He went to the police station and lodged the report. After half an hour Sarpanch and Vipin Bihari came to the police station and informed him that accused has committed murder of Shriram. P.W.-4 Kejuram has stated that on the fateful day he along with Mohit and Mahesh were standing near the shop of Shriram, Manharan was also sitting in the shop and accused Dukalu came with knife and attacked Shriram with it as a result of which Shriram fell down. P.W.-6 Mohit Kumar Verma who is an injured witness and Sarpanch of the village has stated that in the morning of 24.07.95 at about 7.00 a.m. accused came and attacked Bhagwan Singh with the axe as a result of which Bhagwan Singh received injuries on his neck. Thereafter he went to the shop of Bhagwan Singh where he met Manharan-son of Bhagwan Singh and Shriram - younger brother of Bhagwan Singh. However in the meantime accused came there with lathi and knife and said that he would commit their murder and accused Dukalu attacked Shriram with lathi. Shriram tried to save himself from the blow of lathi with his hand and seeing this the accused attacked him on his neck with the knife which he was holding in the other hand and the knife pierced in his neck, as a result of which Shriram fell down, blood started oozing out of the injuries and he died spontaneously. He lodged the report P-4. Panchnama of the body of Shriram P-5 was prepared. Accused gave memorandum and based on that he got recovered the weapons of offence knife and lathi. In the cross examination of these witnesses P.W.-4 Kejuram and P.W.-6 Mohit Kumar the defence counsel has not been able to elicit any circumstance which makes the evidence of these witnesses untrustworthy or unreliable. Moreover the evidence of the eye witnesses stands corroborated by the medical evidence given by Dr.D.C. Jain P.W.-5 who conducted the post mortem on

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आदेश का दिनांक आंदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

the body of Shriram and stated that there was incised wound on the right side on his neck in size of ½ x ¼ x ½ " and as a result of this injury jugular vein was found cut and on account of that there was bleeding and the injury was sufficient in the ordinary course of nature to cause death and the same was homicidal in nature. Therefore in view of the above ocular evidence of injured witness Mohit Kumar and medical evidence it is established that the accused was the author of the murder of Shriram Verma and to this extent we do not find any illegality or infirmity in the judgment of the trial Court.

8. As far as the offence under Section 324 of the IPC is concerned as mentioned above Bhagwan Singh himself has stated that in the morning at about 7.00 a.m. accused came with axe and attacked on his neck as a result of which he sustained injury on his neck. P.W.-8 Dr. S.H.Jaiswal has stated that he examined the injuries sustained by Bhagwan Singh and found that there was an abrasion on the neck of Bhagwan Singh, therefore in view of the evidence of Bhagwan Singh and this witness Dr. Jaiswal that the accused assaulted with a sharp edged weapon on the neck of Bhagwan Singh, we are of the considered opinion that the accused has rightly been convicted under Section 324 of the IPC for causing voluntarily simple injury with a sharp edged weapon on the neck of Bhagwan Singh.

9. *However, learned counsel for the accused/appellant argued that there is nothing on record which shows that the accused assaulted the* deceased with an intention to cause death as there was a dispute between the parties regarding the land but we do not find any substance in the argument advanced by learned counsel for the accused/appellant for the reason that in the early morning accused first attacked Bhagwan

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Singh with axe on his neck and when he was saved on account of intervention by Lakhan, the accused did not stop and again went to his house and came prepared with lathi after tying the knife with the help of string to commit the murder of Bhagwan Singh. Fortunately Bhagwan Singh was not present there at that time as he had already gone to the police station to lodge the report of the earlier incident and unfortunately Shriram was present at the shop who was none else but younger brother of Bhagwan Singh when the accused came prepared second time and did not find Bhagwan Singh there he assaulted Shriram on his neck with a deadly weapon i.e. knife as a result of which jugular vein was cut and he was bleeding profusely, as a result of which he died spontaneously. Therefore the intention of the accused to cause death was writ large.

10. In view of the above, we do not find any illegality or infirmity in the impugned judgment of the trial Court and the appeal deserves to be dismissed. It is accordingly dismissed.

Sd/-
L.C. Bhadoo
Judge

Sd/-
DHIRENDRA MISHRA
Judge

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